RAJA SALIM RAJA KADIR

v.

PP

HIGH COURT MALAYA, KUALA TERENGGANU
ABDUL KADIR SULAIMAN J
[CRIMINAL REVISION NO: 43-02-99]
15 JUNE 1999

ROAD TRAFFIC: *Disqualification - Driving without insurance cover - Disqualification of driving licence - Exemptions - Preconditions for exemptions - Proviso under s.90(3) Road Transport Act 1987 - Scope and operation - Road Transport Act 1987, ss. 90(1), (2), and (3)*

The applicant had pleaded guilty *inter alia* to an offence under s. 90(1) of the Road Transport Act 1987 ('the Act') for driving a car with an expired insurance cover, and upon conviction was fined and disqualified under s. 90(2) of the Act from holding a class D driving license for 12 months. The applicant was dissatisfied with the disqualification order, and in the circumstances applied to the High Court for a revision of the order, requesting in effect that he be exempted from disqualification pursuant to the proviso in s. 90(3) of the Act. Before the learned judge the applicant argued that the application ought to be allowed as (1) he had forgotten to renew the insurance in respect of his motor vehicle and had renewed it a day after being summoned by the authorities (2) the vehicle was essential for him to earn a living, and (3) he did not know that his driving licence would be disqualified when he pleaded guilty to the offence.

Held:

[1] The provisions in the proviso to s. 90(3) is not a provision to exempt a person convicted from the disqualification order made pursuant to s. 90(2) but is a provision to prevent a person from being convicted for an offence under the said sub-s. (2). The said proviso is conjunctive in its operation in that all the three conditions therein must be satisfied before a person charged could escape the conviction.

[2] The applicant had pleaded guilty and was accordingly convicted. The disqualification order being mandatory upon a conviction, the reasons given by the applicant cannot be valid reasons to exempt the disqualification imposed, as otherwise no person can ever be disqualified under the sub-section upon conviction.

[3] Even if the applicant challenges the conviction, the proviso under sub-s. (3) will not be available to him as a defence to avoid the conviction. This is because the motor vehicle at the material time belonged to him and he cannot claim that he neither knew, nor has reason to believe, that there was not in force a policy of insurance in respect thereof. On the facts, the sentence and the order of disqualification were correctly, legally and properly imposed by the learned magistrate

[Order of disqualification affirmed.]

Legislation referred to:
Road Transport Act 1987, ss. 23(1), (2), 90(1), (2), (3)

The applicant in person
For the respondent - Wan Mohd Norisham Yaakob, DPP

Reported by Sherin Kunhibava

JUDGMENT

Abdul Kadir Sulaiman J:

Raja Salim, the applicant, was charged in the Magistrate's Court on two charges, respectively, for an offence punishable under s. 23(1) and for one under s. 90(1) and punishable under sub-s. (2) of the Road Transport Act 1987 (hereinafter referred to as "the 1987 Act"). The offences were said to have been committed on 20 March 1999 at 9.40 am. He pleaded guilty to both the charges and for each of the charges he was convicted and fined RM150 and in default 15 days imprisonment. He paid the fine imposed in respect of the two offences. As for the second offence under s. 90(2), the applicant, apart from being fined, was also disqualified from holding or obtaining a class D driving licence for a period of twelve months from the date of the conviction.

The applicant applied to the High Court for a revision over the order of the learned magistrate disqualifying him from holding or obtaining a driving licence as mentioned above. He said that he should not be so disqualified for the following reasons under the proviso to s. 90(3) of the 1987 Act:

(1) The insurance in respect of his vehicle No. TP 2836 expired on 15th March 1999. He forgot to renew it until he was caught by the authority on 20th March 1999. He renewed his insurance cover on 21st March 1999.

(2) He has 8 school-going children. He is self-employed and the vehicle was essential for him to earn his living to support his family. If he is disqualified from driving it would difficult for him to earn his livelihood to support the family.

(3) When he pleaded guilty before the learned Magistrate on the two charges, he did not know that his driving licence would be disqualified. He thought he would be fined only.

I call this matter up for revision for the reason that there appears to be some misunderstanding over the operation of the proviso to s. 90(3) of the 1987 Act. The said sub-s. (3), including the proviso, state as follows:

(3) A person **disqualified by virtue of a conviction under this section** or of an order made thereunder from holding or obtaining a driving licence shall, for the purpose of Part II, be deemed to be disqualified by virtue of a conviction under the provisions of this Part.

Provided that a person **shall not be convicted of an offence against this section** if he proves –

(a) that the vehicle did not belong to him and was not in his possession under a contract of hiring or loan;

(b) that he was using such vehicle in the course of his employment; and

(c) that he neither knew, nor had reason to believe, that there was not in force in relation to such user a policy of insurance or such security as complies with the provisions of the Part (Emphasis added)

Under sub-s. (2) of s. 90 thereof, upon a conviction under the sub-section, unless the court for special reason to be specified in the order thinks fit to order otherwise and without prejudice to the power of the court to order a longer period of disqualification, it is mandatory upon the court to make an order that the person convicted be disqualified from holding or obtaining a driving licence for a minimum period of twelve months from the date of the conviction. Therefore, for such mandatory order to be made, there must first be a conviction under that sub-section. In other words, the mandatory disqualification results from the conviction for an offence under s. 90(2) thereof. However, the proviso to sub-s. (3) thereof prohibits a certain class of persons from being convicted of such an offence under sub-s. (2). Obviously, therefore, that without a conviction there cannot be an order for disqualification under the said sub-section.

From the above analysis, it is clear that the provisions in the proviso to s. 90(3) is not a provision to exempt a person convicted from the disqualification order made pursuant to s. 90(2) but is a provision to prevent a person from being convicted for an offence under the said sub-s. (2). The said proviso is conjunctive in its operation in that all the three conditions stipulated therein must be satisfied before a person charged could escape the conviction.

Turning to the facts in this case of the applicant Raja Salim, he pleaded guilty to the second charge and was accordingly convicted for the offence. He was satisfied with the fine imposed. All that he wants now is to be exempted from the disqualification order made under s. 90(2) of the 1987 Act for the reasons he gave. The disqualification order being mandatory upon a conviction (unless the court for special reasons to be specified in the order thinks fit to order otherwise) the reasons he gave cannot be valid reasons to exempt the disqualification imposed as otherwise no person can ever be disqualified under the sub-section upon a conviction on the fact of his case.

In his case, even if he challenges the conviction, the proviso under sub-s. (3) will not be available to him as a defence to avoid the conviction because conditions (a) and (c) in particular are not applicable to him. The said motor vehicle belongs to him and he cannot claim that he neither knew, nor has reason to believe, that there was not in force in relation to such user a policy of insurance or such security as complies with the provisions of Part IV of the 1987 Act. His forgetfulness in the matter caused him to contravene s. 90 thereof.

Accordingly, the sentence and the order of disqualification imposed by the learned Magistrate upon the conviction of the applicant on the second charge under s. 90(2) of the 1987 Act are correct, legal and proper. In the circumstances, the findings, the sentence imposed, and the order of disqualification made by the learned magistrate are hereby affirmed as the applicant's application lacks any merit for the court to disturb the order made by the learned magistrate.